

IN THE SUPREME COURT OF OHIO

Bria Bennett, et al.,

Petitioners,

v.

Ohio Redistricting Commission, et al.,

Respondents.

Case No. 2021-1198

Original Action Filed Pursuant to Ohio
Constitution, Article XI, Section 9(A)

*[Apportionment Case Pursuant to S.
Ct. Prac. R. 14.03]*

**EXHIBITS TO PETITIONERS' MOTION TO REQUIRE RESPONDENTS TO
EXPLAIN THEIR FAILURE TO COMPLY WITH THE COURT'S
FEBRUARY 7, 2022 ORDER – VOLUME 2
(Second Affidavit of Derek S. Clinger)**

Abha Khanna (PHV 2189-2021)
Ben Stafford (PHV 25433-2021)
ELIAS LAW GROUP LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
T: (206) 656-0176
F: (206) 656-0180
akhanna@elias.law
bstafford@elias.law

Jyoti Jasrasaria (PHV 25401-2021)
Spencer W. Klein (PHV 25432-2021)
ELIAS LAW GROUP LLP
10 G St NE, Suite 600
Washington, DC 20002
T: (202) 968-4490
F: (202) 968-4498
jjasrasaria@elias.law
sklein@elias.law

Donald J. McTigue* (0022849)
**Counsel of Record*
Derek S. Clinger (0092075)
MCTIGUE COLOMBO & CLINGER LLC
545 East Town Street
Columbus, OH 43215
T: (614) 263-7000
F: (614) 368-6961
dmctigue@electionlawgroup.com
dclinger@electionlawgroup.com

Erik J. Clark (0078732)
Ashley Merino (0096853)
ORGAN LAW LLP
1330 Dublin Road
Columbus, OH 43215
T: (614) 481-0900
F: (614) 481-0904
ejclark@organlegal.com
amerino@organlegal.com

*Counsel for Respondent Ohio Redistricting
Commission*

Dave Yost
OHIO ATTORNEY GENERAL
Bridget C. Coontz (0072919)
Julie M. Pfeiffer (0069762)
Michael Walton (0092201)
OFFICE OF THE OHIO ATTORNEY GENERAL
30 E. Broad Street, 16th Floor
Columbus, OH 43215
T: (614) 466-2872
F: (614) 728-7592
Bridget.Coontz@OhioAGO.gov
Julie.Pfeiffer@OhioAGO.gov
Michael.Walton@OhioAGO.gov

*Counsel for Respondents Ohio Governor Mike
DeWine, Ohio Secretary of State Frank LaRose, and
Ohio Auditor Keith Faber*

Counsel for Petitioners

W. Stuart Dornette (0002955)
Beth A. Bryan (0082076)
Philip D. Williamson (0097174)
TAFT STETTINIUS & HOLLISTER LLP
425 Walnut St., Suite 1800
Cincinnati, OH 45202-3957
T: (513) 381-2838
dornette@taftlaw.com
bryan@taftlaw.com
pwilliamson@taftlaw.com

Phillip J. Strach
Thomas A. Farr
John E. Branch, III
Alyssa M. Riggins
NELSON MULLINS RILEY & SCARBOROUGH
LLP
4140 Parklake Ave., Suite 200
Raleigh, NC 27612
phil.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
T: (919) 329-3812

*Counsel for Respondents Senate President Matt
Huffman and House Speaker Robert Cupp*

Senator Vernon Sykes, Pro Se

House Minority Leader Allison Russo, Pro Se

Second Affidavit of Derek S. Clinger

Franklin County

/s

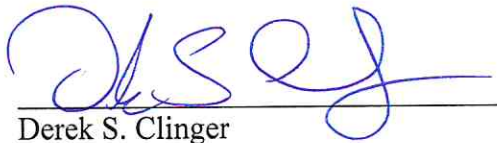
State of Ohio

I, Derek S. Clinger, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge and having personally examined all records referenced in this affidavit, and further state as follows:

1. I am one of the attorneys for Petitioners in the above-captioned matter, Case No. 2021-1198.
2. Document 1 is a true and correct copy of a map of the Rodden III House Plan.
3. Document 2 is a true and correct cop of a map of the Rodden III Senate Plan.
4. Document 3 is a true and correct copy of a letter submitted to the Ohio Redistricting Commission on February 15, 2022 by Ben Stafford, one of the attorneys for Petitioners in Case No. 2021-1198, and Freda Levenson, one of the attorneys for the *League of Women Voters of Ohio* Petitioners in Cas No. 2021-1193. This letter was submitted with the Rodden III Plan.
5. Document 4 is a true and correct copy of a letter sent to House Speaker Robert Cupp on February 9, 2022 by Senator Vernon Sykes.
6. Document 5 is a true and correct copy of the article titled “Republican activists sue in federal court in bid to institute legislative maps rejected by Ohio Supreme Court as GOP gerrymanders” by Andrew Tobias of Cleveland.com, published on February 18, 2022.
7. Document 6 is a true and correct copy of the Complaint filed in *Gonidakis, et al. v. Ohio Redistricting Commission, et al.*, Case No. 2:22-cv-773 (S.D. Ohio) on February 18, 2022.
8. Document 7 is a true and correct copy of the Plaintiffs’ Motion for Preliminary Injunction filed in *Gonidakis, et al. v. Ohio Redistricting Commission, et al.*, Case No. 2:22-cv-773 (S.D. Ohio) on February 18, 2022.
9. The Index at the beginning of the Appendix, copied below, gives a description of each document and states where it appears in the Appendix:

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>BATES RANGE</u>
1	Map of the Rodden III House Plan	BENNETT_001
2	Map of the Rodden III Senate Plan	BENNETT_002
3	February 15, 2022 Letter to Ohio Redistricting Commission from Ben Stafford and Freda Levenson	BENNETT_003
4	February 9, 2022 Letter to Speaker Cupp from Senator Sykes	BENNETT_004- BENNETT_005
5	Andrew Tobias, "Republican activists sue in federal court in bid to institute legislative maps rejected by Ohio Supreme Court as GOP gerrymanders," Cleveland.com (Feb. 18, 2022)	BENNETT_006- BENNETT_008
6	Complaint in <i>Gonidakis, et al. v. Ohio Redistricting Commission, et al.</i> , Case No. 2:22-cv-773 (S.D. Ohio)	BENNETT_009- BENNETT_041
7	Motion for Preliminary Injunction in <i>Gonidakis, et al. v. Ohio Redistricting Commission, et al.</i> , Case No. 2:22-cv-773 (S.D. Ohio)	BENNETT_042- BENNETT_057

FURTHER SAYETH AFFIANT NAUGHT.


Derek S. Clinger

Sworn to and subscribed before me this 18th day of February, 2022.


Notary Public

RONALD J. TROTTER, Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date.
Section 147.03 & 6.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent via email this 18th day of February, 2022 to the following:

DAVE YOST
OHIO ATTORNEY GENERAL
Bridget C. Coontz (0072919)
Julie M. Pfeiffer (0069762)
30 E. Broad Street
Columbus, OH 43215
Tel: (614) 466-2872
Fax: (614) 728-7592
bridget.coontz@ohioago.gov
julie.pfeiffer@ohioago.gov

*Counsel for Respondents
Governor Mike DeWine,
Secretary of State Frank LaRose, and
Auditor Keith Faber*

W. Stuart Dornette (0002955)
Beth A. Bryan (0082076)
Philip D. Williamson (0097174)
TAFT STETTINIUS & HOLLISTER LLP
425 Walnut St., Suite 1800
Cincinnati, Ohio 45202-3957
T: (513) 381-2838
dornette@taftlaw.com
bryan@taftlaw.com
pwilliamson@taftlaw.com

Phillip J. Strach (PHV 25444-2021)
Thomas A. Farr (PHV 25461-2021)
John E. Branch, III (PHV 25460-2021)
Alyssa M. Riggins (PHV 25441-2021)
NELSON MULLINS RILEY & SCARBOROUGH LLP
4140 Parklake Ave., Suite 200
Raleigh, North Carolina 27612
phil.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
T: (919) 329-3812

*Counsel for Respondents
Senate President Matt Huffman and*

House Speaker Robert Cupp

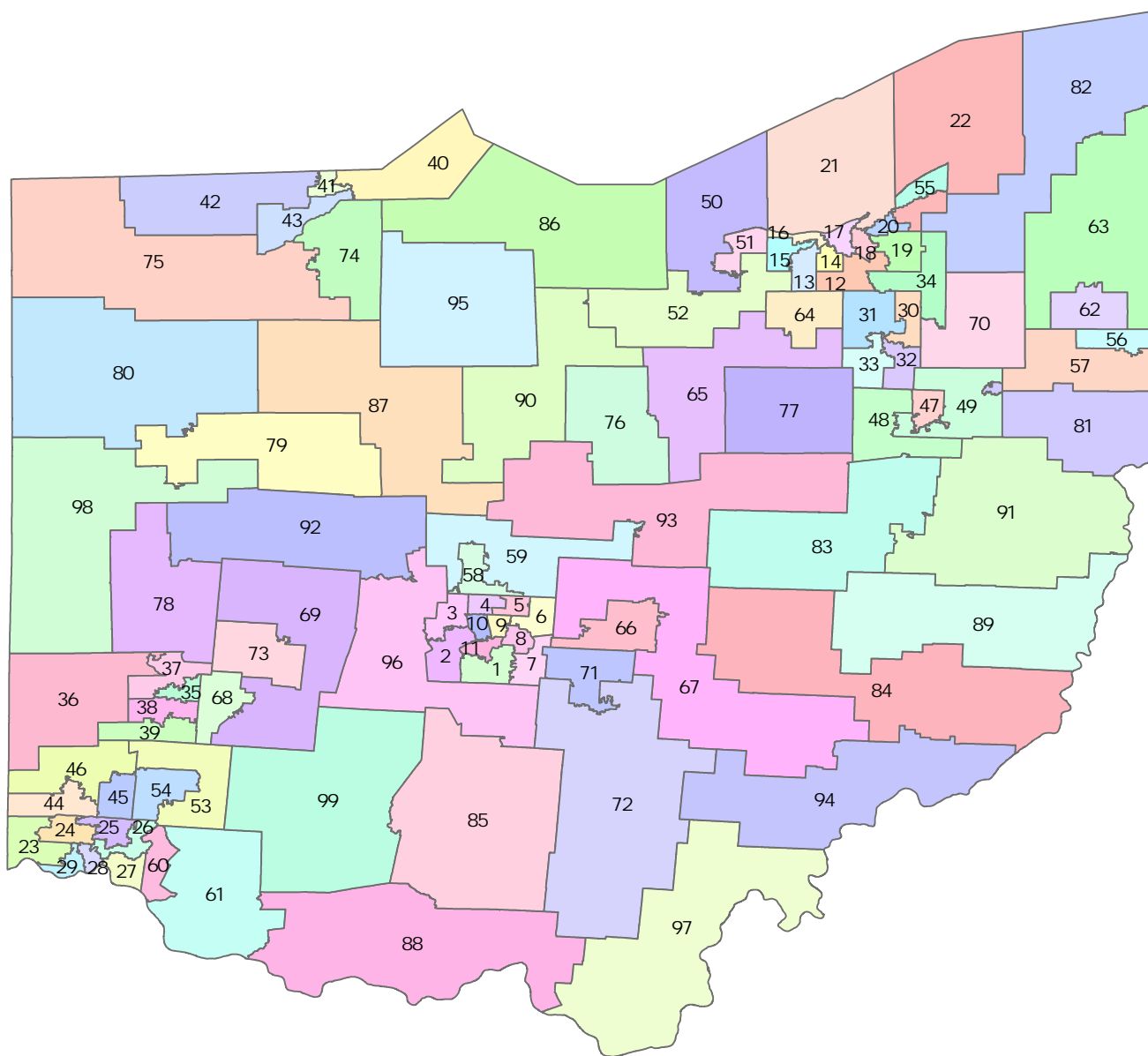
Erik J. Clark (Ohio Bar No. 0078732)
Ashley Merino (Ohio Bar No. 0096853)
ORGAN LAW LLP
1330 Dublin Road
Columbus, Ohio 43215
T: (614) 481-0900
F: (614) 481-0904
ejclark@organlegal.com
amerino@organlegal.com

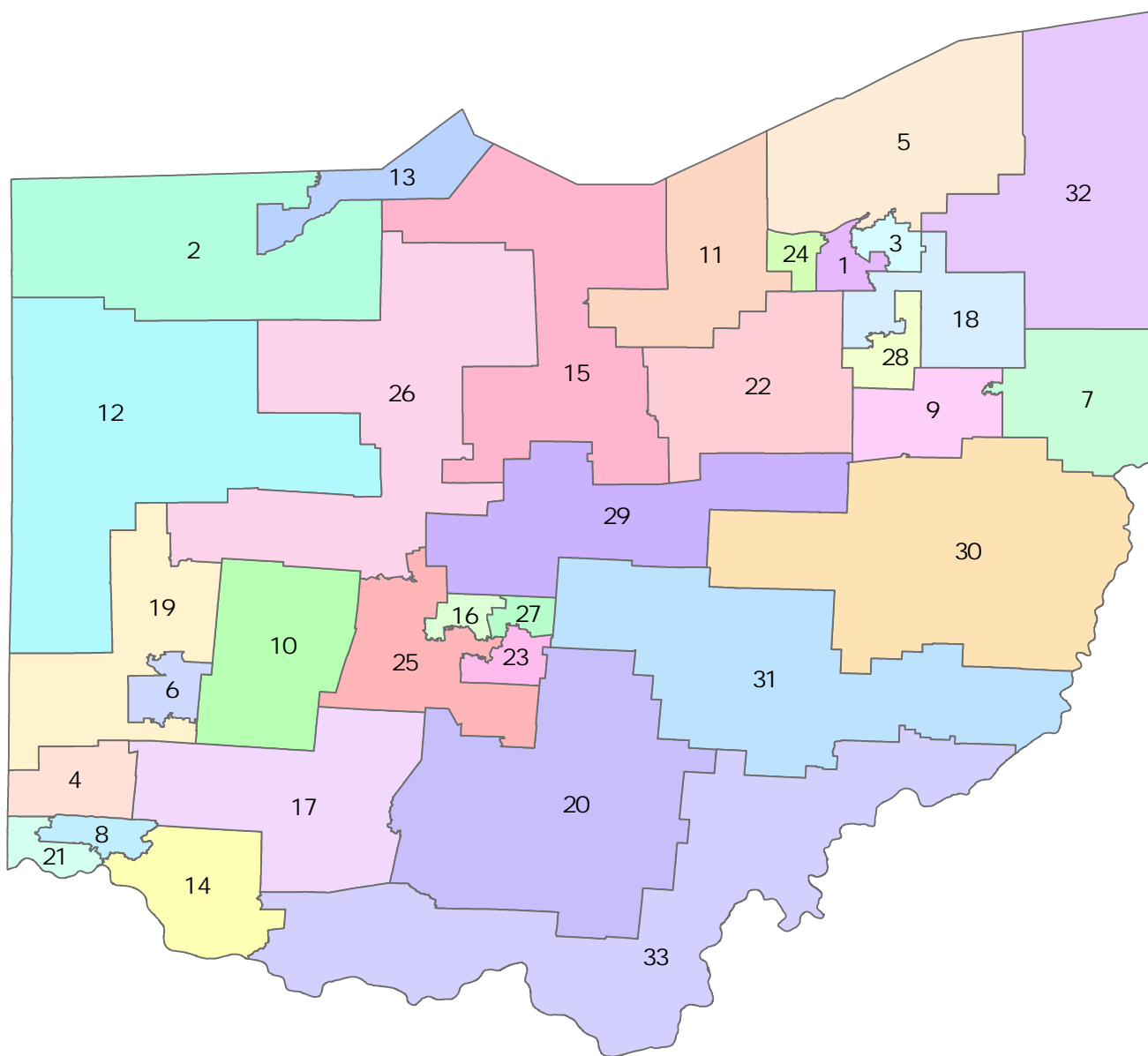
*Counsel for Respondent
Ohio Redistricting Commission*

Vernon Sykes
Vernon.sykes@ohiosenate.gov
Respondent, Pro Se

Allison Russo
Allison.Russo@ohiohouse.gov
Respondent, Pro Se

/s/ Derek S. Clinger
Derek S. Clinger (0092075)





February 15, 2022

To the Ohio Redistricting Commission:

The *Bennett* and *League of Women Voters* Petitioners hereby submit the attached, updated version of the state legislative plan created by Dr. Jonathan Rodden (the “Rodden III Plan”).

Dr. Rodden made very slight changes to his earlier plan in order to address “zero-population splits,” meaning instances in which a district technically divides a township or municipality, but only by splitting a completely unpopulated area from the populated area of a township or municipality. Because a zero-population split does not affect population, it can be “remedied” simply by reallocating the unpopulated area from one side of the “split” to another. Notably, no voters were reassigned to a different district as a result of these changes.

As explained in their objections to the state legislative plan adopted by the Commission on January 22, 2022 (the “Remedial Plan”), the *Bennett* Petitioners do not understand zero-population splits to pose a concern under Article XI, Section 3(D)(3). *See Bennett Pet’rs’ Objections* at 20 n.6. For that reason, while the *Bennett* Petitioners objected to the Remedial Plan on the basis of certain other political subdivision splits, they did not challenge the Remedial Plan on the basis of the multiple instances in which Census blocks with a population of zero were separated from their municipal corporations and townships. *See id.* at 15-20 & n.6; Affidavit of Jonathan Rodden (Jan. 25, 2022) ¶ 37 & n.5. And although Mr. Raymond DiRossi alleged that the “zero-population splits” in Dr. Rodden’s plan were constitutional violations, he did not similarly count (or even mention) his own zero-population splits in the list of technical violations committed by the Commission in the Remedial Plan. *See Affidavit of Raymond DiRossi* (Jan. 28, 2022) ¶ 27-28. Nonetheless, in an effort to avoid any unnecessary disputes as to the significance of zero-population splits, the Rodden III Plan makes minor, technical adjustments to address and eliminate such splits.

For consistency, the Rodden III Plan also corrects certain instances where district lines had been drawn to follow township boundaries instead of municipal boundaries.

The Rodden III Plan fully complies with Article XI, Section 3’s line-drawing requirements. It also fully complies with Article XI, Section 5’s requirements for the numbering of state Senate districts. Furthermore, as required by Article XI, Section 6(B), the Rodden III Plan more closely corresponds to statewide proportionality than the state legislative plans adopted by the Commission in September 2021 or January 2022.

If the Commission believes the enclosed plan has any technical violations, we welcome the Commission’s feedback and invite the Commission to use the map as a starting point and make any further adjustments it believes are constitutionally required.

Sincerely,



Ben Stafford
Counsel for *Bennett* Petitioners



Freda Levenson
Counsel for *League of Women Voters* Petitioners



STATE SENATOR VERNON SYKES
28th District

February 9, 2022

The Honorable Robert Cupp
Ohio House of Representatives
Columbus, Ohio 43215

Dear Co-Chair Speaker Cupp:

As you are aware, the Supreme Court of Ohio has once again directed the Ohio Redistricting Commission to adopt state legislative maps in accordance with the Court's recent ruling. Our deadline is February 17. This is not an impossible task, but one that requires us to work efficiently and expeditiously. We have had numerous conversations over the past few days on the work we must do in order to meet the Court's order. As I have said to you, I believe the Commission should meet as soon as possible.

I write to express my disappointment that based on the availability of majority commissioners, the Commission cannot meet immediately. I recommend that the Commission meet no later than this Friday. The Court specifically noted that we did not efficiently use our time in our most recent efforts. See *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-342, P 44.

Waiting any longer is highly problematic and does not afford ample opportunity for the Commission to have open discussions and to hear testimony from the public on a map. As the Court noted, waiting too long to meet does not indicate that the Commission is attempting to draw a map in accordance with the Court's order. Id.

The Court has directed the *Commission* to attempt to draw district plans. Id. at P 43. In order to do so, the *Commission*, rather than individual Commissioners, must meet and give direction to our staff and consultants. Id. at P 31. At the very least, we need to direct our staff that previously met to begin work now. The Court has been very clear – we must draw a new map that benefits all Ohioans, rather than one based on the previously invalidated map that favors one political party. Id. at P 48. This includes directing our staff and consultants to draw a map that meets the statewide preferences of Ohio voters. The Court has stated those preferences as "54 percent of Ohio voters preferred Republican candidates and about 46 percent of Ohio voters preferred Democratic candidates" Id. at P 54. This equates to roughly 45 Democratic House seats and 15 Democratic Senate seats and correspondingly 54 Republican House seats

and 18 Republican Senate seats. The Commission should formalize these directions to staff in a memo so map drawers and consultants have a clear course of action from the Commission.

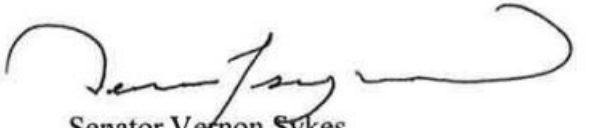
Leader Russo and I submitted a revised proposed map to the Ohio Supreme Court on January 28, 2022 that addressed issues raised in our last Commission meeting. This map meets proportionality standards in Article XI, Section 6 and could be a starting point for the Commission's deliberations. These maps are publicly available and can be accessed by you and the rest of the Commission at:

Democrats' Proposed House Map (1/26/22): <https://davesredistricting.org/maps#viewmap::744e3245-b230-48aa-b0ae-ccf9e700654e>.

Democrats' Proposed Senate Map (1/26/22): <https://davesredistricting.org/join/353fbfd5-09fa-4b8f-bf56-03a08848e885>.

I would also like to reiterate that Leader Russo and I are available at any time to begin the Commission's deliberations and initiate the map-drawing process. I believe the Commission must, and has every ability to, construct a map that follows the Court's orders and reflects the reforms Ohio voters enshrined in our state Constitution. It is imperative we show the Court and Ohioans that we are upholding the law and respecting the Court's ruling.

Sincerely,



Senator Vernon Sykes
Co-chair, Ohio Redistricting Commission

CC: Members, Ohio Redistricting Commission

Republican activists sue in federal court in bid to institute legislative maps rejected by Ohio Supreme Court as GOP gerrymanders

By Andrew J. Tobias, [cleveland.com](https://www.cleveland.com)

COLUMBUS, Ohio -- A group of Republican activists are suing the Ohio Redistricting Commission, trying to get a panel of federal judges to bypass the Ohio Supreme Court and impose a map proposal the state court previously rejected as an illegal pro-GOP gerrymander.

The lawsuit, filed Friday morning in the Southern District of Ohio by Ohio Right to Life President Mike Gonidakis, former state representative Margy Conditt, and other Republicans, comes just hours after the Republican-dominated commission [failed to approve a map](#) before a Thursday deadline set by the Ohio Supreme Court.

The new federal lawsuit says the plaintiffs, who all are Ohio voters, are being “cut out” of the political process by the commission’s failure to adopt new state legislative district maps in a timely fashion, in violation of their constitutional rights. It adds to the rapidly intensifying legal and political dysfunction over Ohio’s ongoing redistricting process, which also includes [one other federal lawsuit](#) and three state lawsuits that still are pending before the Ohio Supreme Court.

The suit also asks the federal court to block the state from holding state legislative elections, including putting a pause on any deadline, until the rejected map is put into place.

A majority of the Ohio Supreme Court, with Republican Chief Justice Maureen O’Connor joining the court’s three Democrats, had ordered the commission to approve new maps by Thursday after [rejecting two previous sets](#) as unconstitutionally slanted in favor of Republicans. They cited new anti-gerrymandering rules overwhelmingly approved by Ohio voters in 2015 as a state constitutional amendment.

But majority Republicans on the commission failed to introduce a map, saying it was impossible to comply with the court’s instructions to add additional Democratic districts to their proposed state legislative maps to make them more proportionate to the statewide vote.

By blowing Thursday’s deadline, Republicans on the Ohio Redistricting Commission left the state with no valid state legislative maps in the face of mounting administrative election-related deadlines, sending the state into uncharted legal territory while jeopardizing a smooth and accurate May election.

BENNETT_006

But majority Republicans on the Ohio Redistricting Commission said they couldn't comply with the court order without violating other state rules having to do with geographic requirements, such as those limiting how counties and other communities can be split. They voted down a Democratic proposal earlier Thursday, saying it was slanted against Republicans, among other issues.

The new federal lawsuit says the redistricting commission is distorting their votes -- either diluting those from areas where the population is growing, or concentrating those from areas that are shrinking -- by failing to pass legislative maps to represent population shifts recorded by the 2020 U.S. Census. It also says the commission's inaction leaves them unable to decide whether to run for office, whom to vote for or whom to educate voters to support.

The suit asks a federal three-judge panel to impose a map plan Republicans on the Ohio Redistricting Commission approved, and that the Ohio Supreme Court rejected last month as illegally slanted in favor of the GOP.

The rejected map plan would favor Republicans to win 58% of Ohio's state legislative seats. Justices ruled it benefitted Republicans, violating state redistricting rules requiring the maps to be politically neutral, because a significant number of the Democratic-leaning districts were hotly competitive, without a corresponding set of competitive Republican districts. The court previously rejected a map Republicans passed in September that favored the GOP to win 65% of state legislative seats.

The plaintiffs in the new federal lawsuit, which include several people associated with anti-abortion activism, are represented by Don Brey, a Republican elections lawyer who has done extensive work in the past for the Ohio Republican lawmakers.

The lawsuit doesn't specify why the January maps should be adopted specifically, other than holding them up as examples of a plan that reflects recent population shifts.

Republican House Speaker Bob Cupp and Senate President Matt Huffman, who sit on the Ohio Redistricting Commission, previously have signaled a federal lawsuit might follow if the Ohio Supreme Court were to strike down commission-passed maps repeatedly, although they indicated they would try to get a federal court to draw the lines.

"At some point, if the state of Ohio doesn't have valid, legal redistricting plans, someone could go to a federal court and say Ohio can't get their stuff together, so federal judge, you draw the map," Phillip Strach, a lawyer representing Cupp and Huffman, told the Ohio Supreme Court in December during oral arguments over lawsuits challenging the first set of maps. "That could happen."

The Ohio Supreme Court, meanwhile, will consider how to respond after the redistricting commission violated their order on Thursday. Plaintiffs in the state case likely will have the chance to request how the Ohio Supreme Court should respond to the redistricting commission blowing their legal deadline. The plaintiffs are three groups --

BENNETT_007

one led by the Ohio League of Women Voters, the second by an affiliate of a national Democratic redistricting group led by former U.S. Attorney General Eric Holder and the third by the left-leaning Ohio Organizing Collaborative.

Here is the full lawsuit:

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MICHAEL GONIDAKIS,
6586 Baronscourt Loop
Dublin, OH 43016

MARY PARKER,
8925 Cupstone Drive
Galena, OH 43021

MARGARET CONDITT,
6959 Rock Springs Drive
Liberty Twp., OH 45011

BETH VANDERKOOI,
541 East Moler Street
Columbus, OH 43207

LINDA SMITH,
4998 Blendon Pond Drive
Westerville, OH 43081

DELBERT DUDUIT,
32 Greenbriar Road
Lucasville, OH 45648

THOMAS W. KIDD JR.,
10114 Brooks Carroll Road
Waynesville, OH 45068

DUCIA HAMM,
53 North Main Street
Ashland, OH 44805

Plaintiffs,

v.

Case No. 2:22-cv-773

Three-Judge Panel Requested

OHIO REDISTRICTING COMMISSION,
Ohio Statehouse
1 Capitol Square
Columbus, OH 43215

FRANK LAROSE, *in his official capacity*,
22 N. Fourth St.
16th Floor
Columbus, OH 43215

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Ohio's state legislative districts, under the United States Constitution and as confirmed by voters through amendments to the Ohio Constitution, must be substantially similar in population. But they are not right now. That is because the state legislative districts are based on 2010 census data instead of 2020 census data. And as the 2020 U.S. Census recently showed, much has changed in Ohio over the last ten years, including a net gain of more than 250,000 people and double-digit growth in many regions.

2. Ohio had a chance to bring these districts up to date. The Ohio Redistricting Commission (the “Redistricting Commission”) passed two plans that met these requirements—and did so in time for candidates to declare for Ohio’s primaries. But both plans were invalidated by the Ohio Supreme Court.

3. In fact, the February 2, 2022, filing deadline for partisan candidates was already in the rearview mirror before the Ohio Supreme Court rejected the Redistricting Commission's second plan on February 7, 2022.

4. The Redistricting Commission is now at an impasse after the Ohio Supreme Court ordered the Redistricting Commission to draw a third plan.

5. As a result, without new districts, Plaintiffs are cut out of the political process. Either the 2010 legislative districts apply and their votes are diluted by the population growth reflected in the 2020 U.S. Census data. Or alternatively, they are not members of any state legislative district and cannot vote for state house of representatives or senate candidates. Regardless, the uncertainty has deprived Plaintiffs the opportunity to run for office, educate themselves about candidates, support candidates, and associate with like-minded voters, among other things.

6. Therefore, this Court should declare that the current state legislative districts (or lack thereof) violate the U.S. Constitution and this Court should adopt the Second Plan previously adopted by the Redistricting Commission, attached as Exhibit B, for the 2022 election cycle.

THE PARTIES

7. Plaintiffs are Ohio voters that live in House and Senate Districts that were drawn in 2010:

- a. Plaintiff Michael Gonidakis resides in Dublin, Ohio at 6586 Baronscourt Loop in House District 21 and Senate District 16.
- b. Plaintiff Mary Parker resides in Galena, Ohio at 8925 Cupstone Drive in House District 68 and Senate District 19.
- c. Plaintiff Margaret Conditt resides in Liberty Township, Ohio at 6959 Rock Springs Drive in House District 52 and Senate District 4.
- d. Plaintiff Beth Vanderkooi resides in Columbus, Ohio at 541 East Moler Street in House District 18 and Senate District 15.

- e. Plaintiff Linda Smith resides in Westerville, Ohio at 4998 Blendon Pond Drive in House District 19 and Senate District 3.
 - f. Plaintiff Delbert Duduit resides in Lucasville, Ohio at 32 Greenbriar Road in House District 90 and Senate District 14.
 - g. Plaintiff Thomas W. Kidd Jr. resides in Waynesville, Ohio 45068 at 10114 Brooks Carroll Road in House District 62 and Senate District 7.
 - h. Plaintiff Ducia Hamm resides in Savannah, Ohio at 53 North Main Street in House District 70 and Senate District 22.
8. Plaintiffs live in either malapportioned state legislative districts (or non-existent state legislative districts), thus harming Plaintiffs.
9. Plaintiffs are also harmed right now because, until valid redistricting occurs, Ohioans, including Plaintiffs, cannot decide which candidates to support, cannot decide to run or to encourage candidates to run, cannot educate themselves or others on the positions of candidates in their districts and prepare to hold those candidates responsible, and cannot associate with others in their district.
10. Defendants are the Ohio Redistricting Commission, which is made up of a bipartisan group of elected officials, and Frank LaRose, in his official capacity as Secretary of State.

JURISDICTION AND VENUE

11. Plaintiffs bring this action under 42 U.S.C. § 1983 to address the deprivation, under the color of state law, of rights secured by the United States Constitution. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the United States Constitution and the laws of the United

States and involve the assertion of a deprivation, under color of state law, of rights under the Constitution of the United States. This Court has the authority to enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and order injunctive relief under Federal Rule of Civil Procedure 65.

12. This Court has personal jurisdiction over Defendants, a public entity established under the Ohio Constitution and an elected official in his official capacity.

13. Venue is proper in the Southern District of Ohio, Eastern Division, because a substantial part of the events that give rise to Plaintiffs' claims have occurred and will occur in this District and Defendant's office is in this District.

14. A three-judge panel of this Court has jurisdiction to adjudicate this lawsuit because Plaintiffs are challenging the constitutionality of the apportionment of Ohio's statewide legislative body. *See* 28 U.S.C. § 2284(a).

STATEMENT OF FACTS

A. Ohio voters elect bicameral legislature.

15. The State of Ohio has a bicameral legislature, with a House of Representatives and a Senate.

16. Representatives are elected biennially by the electors of their respective house of representatives districts, with terms beginning on the first day of January and continuing for two years. *See* Ohio Constitution, Article II, Section 2.

17. Senators are elected by the electors of their respective senate districts. Their terms begin on the first day of January and continue for four years. *See* Ohio Constitution, Article II, Section 2.

18. The Ohio Constitution has historically provided for 99 Representatives and 33 Senators. *See* Ohio Constitution, Article XI, Section 2 (2010). The districts have been determined by using the federal decennial census to divide the total population of the state by 99 and 33, respectively. *Id.* Districts must be substantially equal in population. *See* Ohio Constitution, Article XI, Section 3 (2010).

B. New districts using federal census data in 2010 and approved by Ohio Supreme Court.

19. The 2010 decennial census found that Ohio had a population of 11,536,504 people. Two counties: Cuyahoga County and Franklin County had populations exceeding 1,000,000. Many others had populations of more than 300,000, including Hamilton, Montgomery, Summit, and Lorain, to name a few.

20. Following receipt of the 2010 census data, districts were created in accordance with the Ohio Constitution.

21. The Ohio Supreme Court subsequently confirmed the districts were apportioned consistent with the Ohio Constitution. *See Wilson v. Kasich*, 134 Ohio St.3d 221, 2012-Ohio-5367, 981 N.E.2d 814, ¶ 48.

C. Ohioans create new process for 2020 that still relies on federal census data.

22. In 2015, voters amended the Ohio Constitution with “Issue 1,” which created a bipartisan process for drawing new legislative districts that relied on the decennial census data.

23. Ohio voters were clear that, as before the amendment, the legislative districts were to be based on the population of the state as determined by the federal decennial census. *See* Ohio Constitution, Article XI, Section 3.¹

¹ The Ohio Constitution, before and after 2015, also allows for use of alternative census information in the unlikely event the federal decennial census is unavailable.

24. There were other changes as well, including the creation of the bipartisan Ohio Redistricting Commission. The Redistricting Commission was to be comprised of the governor, the auditor of state, the secretary of state, one person appointed by the speaker of the house of representatives, one person appointed by the legislative leader of the largest political party in the house of representatives of which the speaker of the house of representatives is not a member, one person appointed by the president of the senate, and one person appointed by the legislative leader of the largest political party in the senate of which the president of the senate is not a member. *See* Ohio Constitution, Article XI, Section 1.

25. Under this revised Ohio Constitution, the Redistricting Commission would be asked to draw new state legislative districts² tied to various factors, such as federal partisan election results. *See* Ohio Constitution, Article XI, Section 6.

26. A district plan approved by a bipartisan majority of the Redistricting Commission would be valid for ten years, while a district plan approved by a simple majority for would be valid for four years. *See* Ohio Constitution, Article XI, Sections 8(B) and 8(C)(1)(a).

D. The COVID-19 pandemic interrupts the 2020 decennial census.

27. The COVID-19 pandemic, which halted much of ordinary life during March 2020, also impacted the 2020 decennial census.

28. The Census Bureau usually relies on an army of door-knockers and phone bank employees to supplement the households that fill out forms.

29. The Census Bureau's tactic of utilizing door-knockers and phone bank employees was made impractical because of the pandemic.

² The Redistricting Commission also draws congressional districts, which are not at issue in this Complaint.

30. This led to delay by the Census Bureau and litigation ensued because of the delay.

31. Ohio eventually sued the Census Bureau and secured a settlement that ensured a still delayed, yet more timely, delivery of the information needed by the Redistricting Commission.

32. The 2020 U.S. Census data shows that Ohio's population increased to 11,799,448 people, an addition of hundreds of thousands of people over ten years.

33. Many political subdivisions grew by double-digits, including Franklin County, Delaware County, Warren County, and Union County, to name a few.

34. For Ohio's most populous counties, Franklin, Cuyahoga, and Hamilton, there was a total shift of more than 200,000 people.

E. The Redistricting Commission adopts its first plan using the most recent census data in September 2021 ("First Plan").

35. With 2020 decennial census data finally in hand, the Redistricting Commission adopted an initial proposed state legislative district plan on September 9, 2021.

36. After the adoption of the September 9, 2021, proposed state legislative district plan, the Redistricting Commission held public meetings throughout Ohio on September 12, 13, and 14, 2021.

37. Shortly after midnight on September 16, 2021, the Redistricting Commission voted five to two to adopt an amended version of the initial plan, or the First Plan.

38. A copy of the First Plan is attached as Exhibit A to the Complaint.

39. Shortly thereafter, at least three organizations filed complaints in the Ohio Supreme Court challenging the Redistricting Commission's First Plan.

40. The cases were brought pursuant to Article XI, Section 9 of the Ohio Constitution, and challenged the constitutionality of the Redistricting Commission's First Plan.

F. Three months later, in January 2022, the Ohio Supreme Court rejects the First Plan.

41. On January 12, 2022, nearly three and a half months after the organizations initially challenged the Redistricting Commission's First Plan, the Ohio Supreme Court invalidated the First Plan. *See League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 2022-Ohio-65, ¶ 138.

42. The Ohio Supreme Court ordered the Redistricting Commission to be reconstituted under Article XI, Section 1, to “convene, and to ascertain and adopt a General Assembly – district plan in conformity with the Ohio Constitution” and directed the Redistricting Commission to adopt a new plan within ten days. *Id.* at ¶ 139.

G. The Redistricting Commission adopts a Second Plan, again using the most recent census data.

43. The Redistricting Commission adopted a second state legislative district plan on January 22, 2022, the Second Plan, by a five to two vote.

44. A copy of the Second Plan is attached as Exhibit B to the Complaint.

45. Because the Redistricting Commission's Second Plan did not have the bipartisan support required under Article XI, Section 8(B) of the Ohio Constitution, the Second Plan could remain in effect for no more than four years.

46. The Redistricting Commission's Second Plan changed five House districts from the Redistricting Commission's First Plan from Republican-leaning to Democratic-leaning and changed three Senate districts from Republican-leaning to Democratic-leaning.

47. This represents a greater than 6% increase in the number of Democratic-leaning districts from the Redistricting Commission's First Plan.

48. Nevertheless, the same organizations who challenged the Redistricting Commission's First Plan again filed objections.

H. Primary deadline passes in February 2022 for candidates while the Redistricting Commission's Second Plan is considered.

49. While the Redistricting Commission's Second Plan sat before the Ohio Supreme Court, the deadline for partisan candidates came and went.

50. On February 2, 2022, the deadline for partisan candidates to declare their candidacy passed.

51. On February 14, 2022, the deadline for local Boards of Elections to certify the validity and sufficiency of partisan candidates' petitions also passed.

I. Ohio Supreme Court rejects Second Plan and orders Third Plan.

52. On February 7, 2022, the Ohio Supreme Court sustained objections relating to the Redistricting Commission's Second Plan and invalidated the revised plan in its entirety. *See League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 2022-Ohio-342, ¶ 67.

53. After invalidating the Redistricting Commission's Second Plan, the Ohio Supreme Court ordered the Redistricting Commission to adopt a Third Plan, and to file a copy of the Third Plan with the secretary of state no later than February 17, 2022, and with the Court by 9:00 am on February 18, 2022.

J. Redistricting Commission declares impasse and cannot issue Third Plan.

54. Consistent with the Ohio Supreme Court's order, the Redistricting Commission met a third time.

55. However, the Redistricting Commission could not reach an agreement that followed the U.S. Constitution, Ohio Constitution, the Ohio Supreme Court, and the applicable federal data.

56. Accordingly, on February 17, 2022, the Redistricting Commission declared an “impasse” and determined it could not issue a Third Plan.

K. Plaintiffs are now stuck in malapportioned districts (or no district at all).

57. It is a near certainty that the February 22, 2022, deadline for write-in candidates to declare their intent for the May 3, 2022, primary election and the Secretary of State’s deadline to certify to boards of elections the form of the official May 3, 2022, ballot will pass before a resolution is achieved regarding Ohio’s legislative district maps.

58. Without legislative districts, Plaintiffs cannot decide which candidates to support, cannot decide to run for elected office or to encourage candidates to run, cannot educate themselves or others on the positions of candidates in their districts and prepare to hold those candidates responsible, and cannot associate with others in their district.

59. Plaintiffs are in districts based on census data that is more than ten years old instead of districts based on the 2020 decennial census. As a result, Plaintiffs live in malapportioned districts, with variance greater than 10%. For example, Mr. Gonidakis, Ms. Vanderkooi, and Ms. Smith live in Franklin County, which has gained more than 150,000 people since the last census, and their respective cities have experienced more than 10% in population gains, diluting their votes within their voting districts. The same is true for Ms. Parker, Mr. Kidd, and Ms. Conditt, whose areas (and therefore districts) have also grown exponentially in population. Conversely, individuals in areas of Ohio that lost population, such as Scioto County, have seen their voting power increase because their population decreased.

60. As a result, Plaintiffs’ districts (using the 2010 legislative district maps), including House Districts 18, 19, 21, 52, 62, 68, 70, and 90 and Senate Districts 3, 4, 7, 14, 15, 16, 19, and

22, are malapportioned, as they now are outside the permissible 5% variance of the target population.

61. Because Plaintiffs' districts are malapportioned and require adjustment, and the adjustment can only come from other state legislative districts, all of Ohio's districts are malapportioned or otherwise impacted by malapportionment and requirement adjustment.

62. Alternatively, the 2010 state legislative districts have expired, and Plaintiffs' rights have been violated because they have no state legislative districts at all.

63. The plans adopted by the Redistricting Commission and rejected by the Ohio Supreme Court, attached as Exhibits A and B, properly distribute voting power and are based on 2020 census data.

64. Additionally, because litigation regarding the Redistricting Commission's approved legislative district plans has been pending before the Ohio Supreme Court for nearly five months, it is likely no resolution will be achieved regarding Ohio's state legislative district maps before the April 4, 2022, voter registration deadline for the May 3, 2022, primary election.

COUNT I: LEGISLATIVE MALAPPORTIONMENT

65. The Fourteenth Amendment of the U.S. Constitution requires that no state shall deny any person within its jurisdiction the equal protection of its laws. This requires that both houses of a bicameral legislature be apportioned on a population basis. In other words, an individual's right to vote for state legislatures is unconditionally impaired when the weight of the individual's vote is substantially diluted when compared with citizens that in other parts of the state.

66. The 2020 U.S. Census revealed significant changes to Ohio's population.

67. But Ohio does not currently have districts modified to fit these most recent changes.

68. As a result, if elections are allowed to take place before the legal sufficiency of districts are resolved, votes in overpopulated districts, such as Plaintiffs, will suffer from vote dilution. This means a deprivation of political power and resources.

69. Additionally, the ongoing uncertainty for the 2022 election cycle prevents voters, including Plaintiffs, from knowing their voting district, engaging with candidates, holding representatives accountable, and associating and organizing with their favored candidates.

70. Plaintiffs are suffering this harm on an ongoing basis.

COUNT II, ALTERNATIVE: DENIAL OF RIGHT TO VOTE

71. The Fourteenth Amendment of the U.S. Constitution requires that no state shall deny any person within its jurisdiction the equal protection of its laws without due process. This requires allowing an elector the opportunity to vote for a candidate for a state legislative district.

72. There are currently no state legislative districts, and the deadline for declaring partisan candidacy has passed.

73. Because there are no state legislative districts, Plaintiffs cannot exercise their right to vote for a candidate for a state legislative district in violation of the Equal Protection Clause and the Due Process Clause.

74. Additionally, the ongoing uncertainty for the 2022 election cycle prevents voters, including Plaintiffs, from knowing their voting district, engaging with candidates, holding representatives accountable, and associating and organizing with their favored candidates.

75. Plaintiffs are suffering this harm on an ongoing basis.

COUNT III: DEPRIVATION OF FREEDOM OF ASSOCIATION

76. The First Amendment of the U.S. Constitution protects the freedom of association and applies to the states via the Fourteenth Amendment.

77. Unnecessary uncertainty about the 2022 election impedes candidates' abilities to run for office, and restricts Plaintiffs' First Amendment right to association because it restricts an individual's ability to assess candidate positions and qualifications, advocate for candidates, and associate with like-minded voters.

78. Because of the malapportioned districts or the lack of districts, there is imminent risk of confusion and ongoing denial of Plaintiffs' freedom of association.

79. There is no compelling reason to deny Plaintiffs' freedom of association.

80. Plaintiffs are suffering these harms on an ongoing basis.

COUNT IV: PRELIMINARY INJUNCTION

81. Because Plaintiffs have no state legislative districts or their state legislative districts are malapportioned, they are very likely to succeed on the merits of their claim.

82. Because the Plaintiffs are being denied the right to vote in violation of the U.S. Constitution, they are suffering an irreparable injury.

83. Because voting is a fundamental right, the public interest favors restoring the voting rights of Plaintiffs and other Ohioans.

84. There is no harm in the Redistricting Commission following the U.S. Constitution and Plaintiffs receiving the right to vote.

REQUEST FOR THREE-JUDGE PANEL

85. Plaintiffs request a three-judge panel to adjudicate this lawsuit because Plaintiffs are challenging the constitutionality of the apportionment of Ohio's statewide legislative body. *See* 28 U.S.C. § 2284(a).

WHEREFORE, Plaintiffs respectfully request that this Court:

- i. Declare that the current configurations of Ohio's state legislative districts (or lack thereof) violate the First and Fourteenth Amendments to the U.S. Constitution;
- ii. Permanently enjoin Defendants and all persons acting on their behalf or in concert with them from implementing, enforcing, or conducting any elections under Ohio's current state legislative districts;
- iii. Establish a schedule that will enable the Court to adopt a timely enacted and lawful plan and implement the new plan for Ohio's state legislative districts, specifically the Second Plan, attached as Exhibit B;
- iv. Issue an order, as needed, staying the necessary election-related deadlines as they pertain to the state legislative districts pending this Court's implementation of interim redistricting plans;
- v. Retain jurisdiction while Defendants enacts plans by this Court's deadline;
- vi. Award Plaintiffs' attorneys' fees and costs in this action; and
- vii. Grant such other and further relief as this Court deems just and proper in the circumstances.

Respectfully submitted,

Isaac Wiles & Burkholder LLC

/s/ Donald C. Brey

Donald C. Brey (0021965)

Brian M. Zets (0066544)

Matthew R. Aumann (0093612)

Ryan C. Spitzer (0093515)

Two Miranova Place, Suite 700

Columbus, Ohio 43215

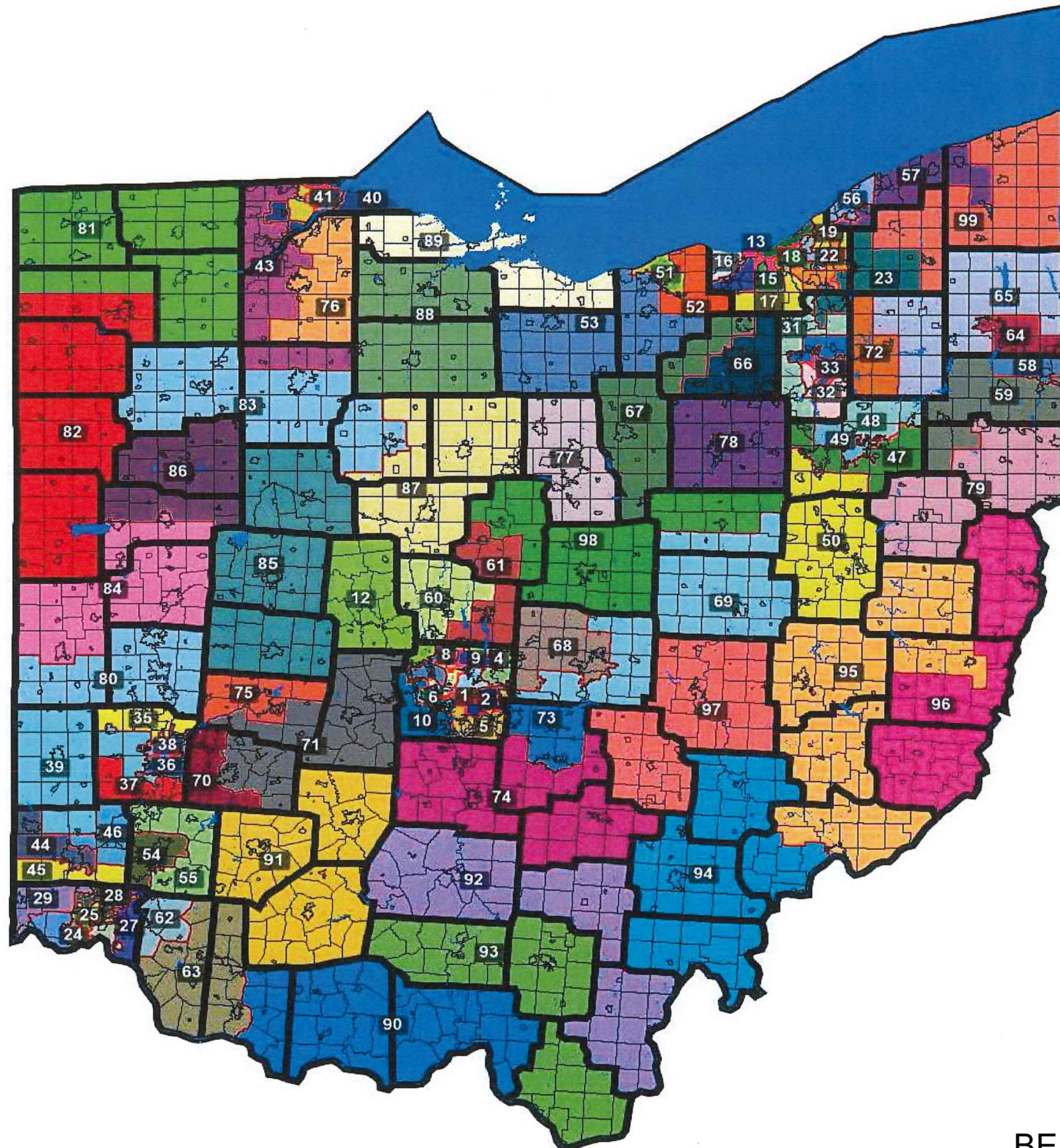
Tel: 614-221-2121; Fax: 614-365-9516

dbrey@isaacwiles.com
bzets@isaacwiles.com
maumann@isaacwiles.com
rspitzer@isaacwiles.com

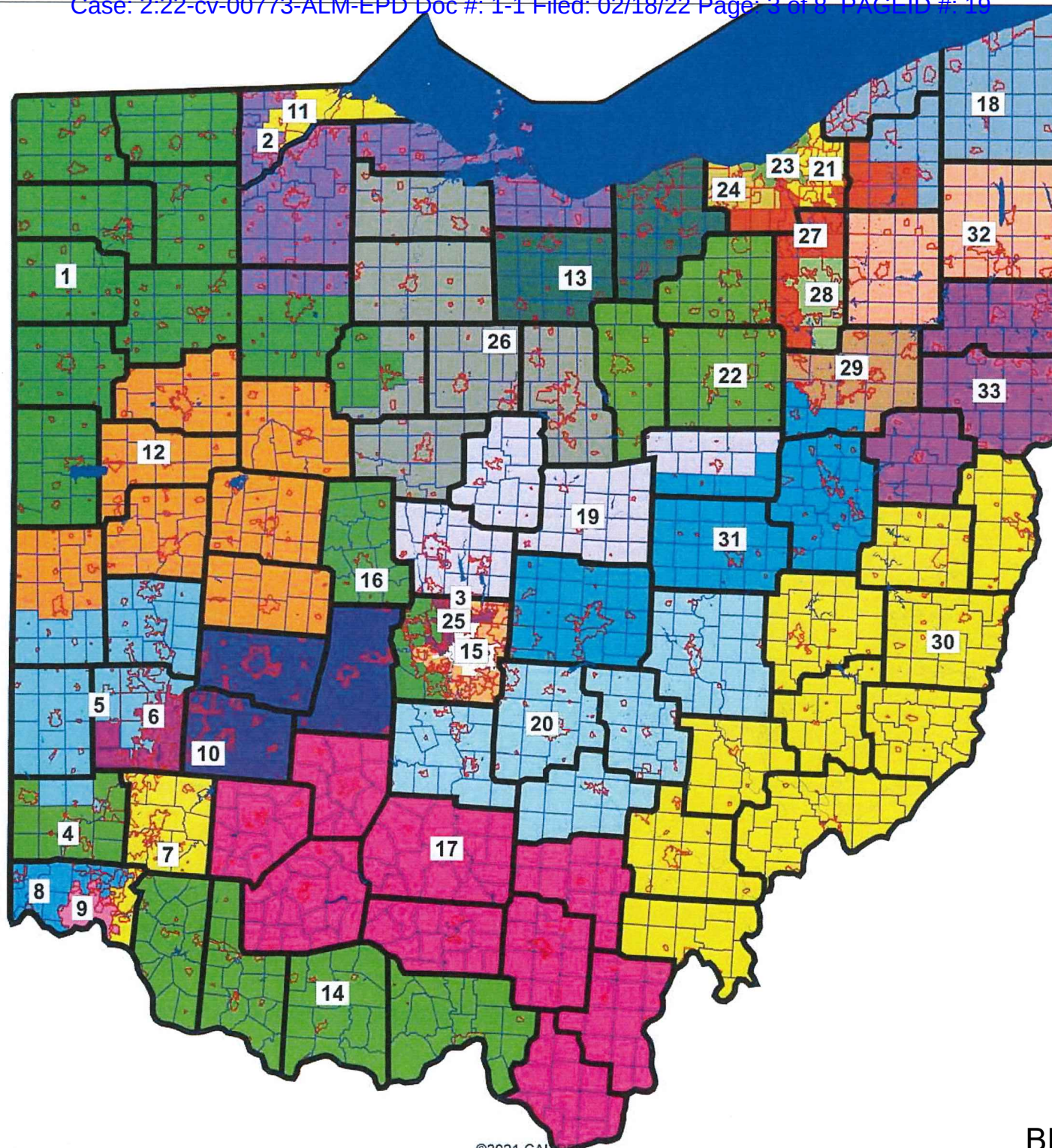
Attorneys for Plaintiffs

EXHIBIT

A



BENNETT_026



Pursuant to the 2020 U.S. Census, the population of Ohio as of April 1, 2020 was 11,799,448. The target population for each district is therefore 119,186.

Statistical Information – Proposed Ohio House Districts

House District	Population	Deviation
1	115,498	-3.09%
2	117,559	-1.37%
3	114,104	-4.26%
4	114,500	-3.93%
5	116,735	-2.06%
6	115,517	-3.08%
7	115,170	-3.37%
8	115,189	-3.35%
9	120,997	1.52%
10	113,326	-4.92%
11	114,236	-4.15%
12	113,760	-4.55%
13	124,554	4.50%
14	125,064	4.93%
15	125,088	4.95%
16	121,879	2.26%
17	124,819	4.73%
18	123,226	3.39%
19	124,679	4.61%
20	125,098	4.96%
21	122,023	2.38%
22	124,633	4.57%
23	122,775	3.01%
24	123,469	3.59%
25	123,568	3.68%
26	124,802	4.71%
27	116,286	-2.43%
28	114,050	-4.31%
29	114,653	-3.80%
30	113,811	-4.51%
31	124,467	4.43%
32	122,679	2.93%
33	123,791	3.86%

PROPOSED GENERAL ASSEMBLY DISTRICT PLAN (AS AMENDED)
SEPTEMBER 15, 2021

34	121,807	2.20%
35	121,171	1.67%
36	114,991	-3.52%
37	125,125	4.98%
38	122,075	2.42%
39	116,366	-2.37%
40	113,280	-4.96%
41	113,996	-4.35%
42	115,350	-3.22%
43	115,804	-2.84%
44	123,473	3.60%
45	123,472	3.60%
46	121,992	2.35%
47	115,745	-2.89%
48	113,975	-4.37%
49	124,555	4.50%
50	113,841	-4.48%
51	125,115	4.97%
52	124,642	4.58%
53	121,772	2.17%
54	121,704	2.11%
55	120,633	1.21%
56	124,454	4.42%
57	124,671	4.60%
58	116,292	-2.43%
59	123,105	3.29%
60	113,964	-4.38%
61	113,860	-4.47%
62	124,425	4.40%
63	113,544	-4.73%
64	124,731	4.65%
65	117,025	-1.81%
66	116,342	-2.39%
67	118,575	-0.51%
68	115,385	-3.19%
69	114,369	-4.04%
70	116,643	-2.13%
71	115,026	-3.49%

PROPOSED GENERAL ASSEMBLY DISTRICT PLAN (AS AMENDED)
SEPTEMBER 15, 2021

72	122,012	2.37%
73	123,971	4.01%
74	121,539	1.97%
75	116,122	-2.57%
76	116,323	-2.40%
77	124,936	4.82%
78	116,894	-1.92%
79	117,815	-1.15%
80	124,211	4.22%
81	113,487	-4.78%
82	122,541	2.81%
83	113,996	-4.35%
84	118,816	-0.31%
85	115,560	-3.04%
86	114,486	-3.94%
87	113,433	-4.83%
88	113,965	-4.38%
89	115,986	-2.68%
90	115,793	-2.85%
91	114,286	-4.11%
92	119,113	-0.06%
93	117,981	-1.01%
94	122,131	2.47%
95	124,027	4.06%
96	124,223	4.23%
97	121,818	2.21%
98	113,571	-4.71%
99	125,112	4.97%

PROPOSED GENERAL ASSEMBLY DISTRICT PLAN (AS AMENDED)
SEPTEMBER 15, 2021

Statistical Information – Proposed Ohio Senate Districts

Senate District	Population	Deviation
1	350,024	-2.11%
2	348,113	-2.64%
3	346,752	-3.02%
4	368,937	3.18%
5	361,748	1.17%
6	362,191	1.30%
7	358,623	0.30%
8	342,514	-4.21%
9	371,839	3.99%
10	347,791	-2.73%
11	342,626	-4.18%
12	348,862	-2.43%
13	371,529	3.91%
14	353,762	-1.06%
15	347,161	-2.91%
16	341,322	-4.54%
17	351,380	-1.73%
18	374,237	4.66%
19	341,395	-4.52%
20	367,328	2.73%
21	371,335	3.85%
22	351,811	-1.61%
23	372,878	4.28%
24	372,031	4.05%
25	351,356	-1.73%
26	352,334	-1.46%
27	372,061	4.06%
28	368,277	3.00%
29	354,275	-0.92%
30	370,381	3.59%
31	343,595	-3.91%
32	363,768	1.74%
33	357,212	-0.10%

PROPOSED GENERAL ASSEMBLY DISTRICT PLAN (AS AMENDED)
SEPTEMBER 15, 2021

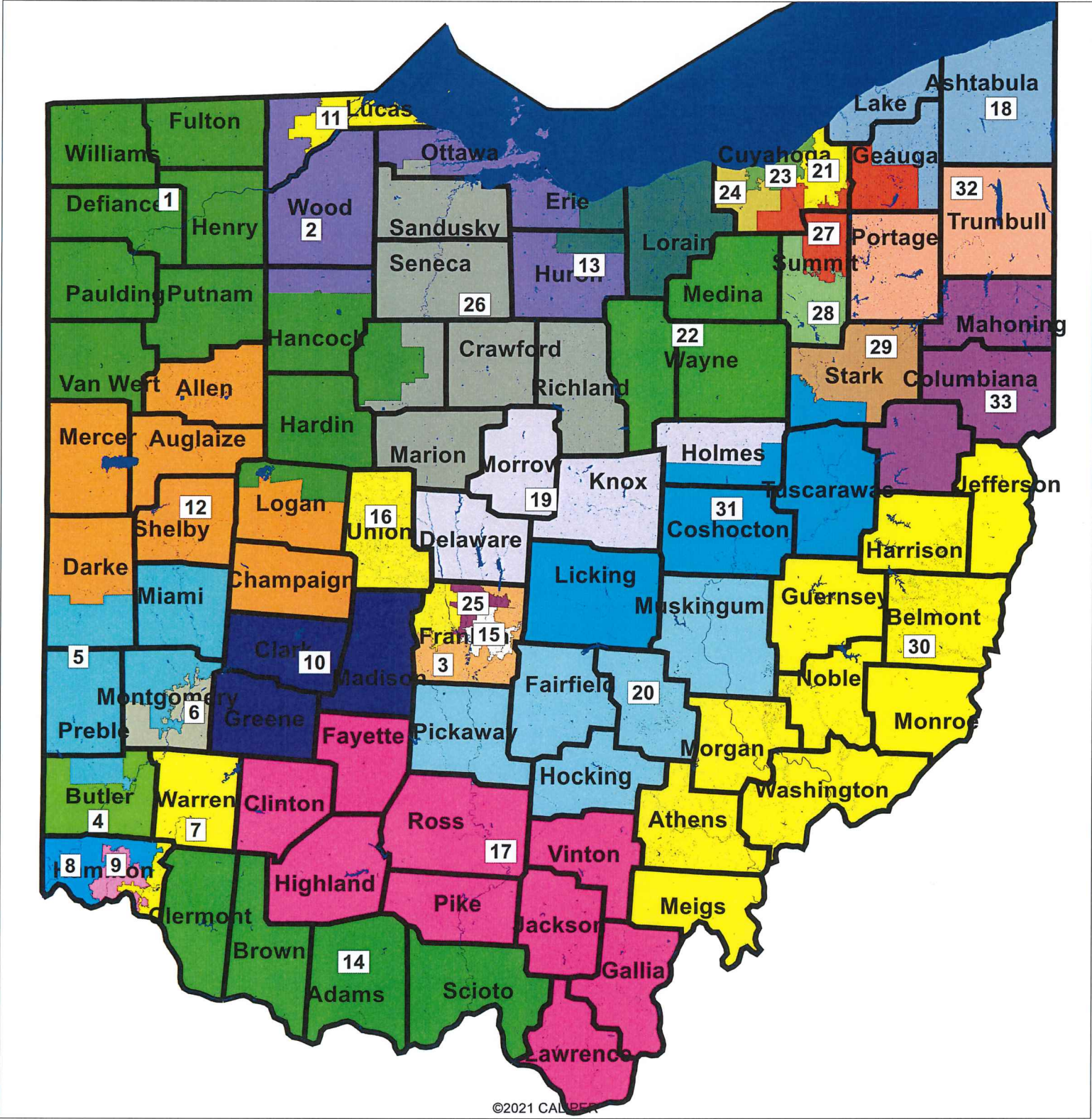
Ohio's 33 Senate districts are comprised of the following Ohio House districts.

Senate District 1:	House Districts 81, 82, 83	
Senate District 2:	House Districts 43, 76, 89	
Senate District 3:	House Districts 4, 5, 6	
Senate District 4:	House Districts 44, 45, 46	
Senate District 5:	House Districts 35, 39, 80	
Senate District 6:	House Districts 36, 37, 38	
Senate District 7:	House Districts 27, 54, 55	
Senate District 8:	House Districts 28, 29, 30	
Senate District 9:	House Districts 24, 25, 26	
Senate District 10:	House Districts 70, 71, 75	
Senate District 11:	House Districts 40, 41, 42	
Senate District 12:	House Districts 84, 85, 86	
Senate District 13:	House Districts 51, 52, 53	
Senate District 14:	House Districts 62, 63, 90	
Senate District 15:	House Districts 1, 2, 3	
Senate District 16:	House Districts 10, 11, 12	
Senate District 17:	House Districts 91, 92, 93	
Senate District 18:	House Districts 56, 57, 99	Assigned to Senator Cirino
Senate District 19:	House Districts 60, 61, 98	
Senate District 20:	House Districts 73, 74, 97	
Senate District 21:	House Districts 19, 21, 22	
Senate District 22:	House Districts 66, 67, 78	Assigned to Senator Romanchuk
Senate District 23:	House Districts 13, 18, 20	
Senate District 24:	House Districts 14, 15, 16	Assigned to Senator Dolan
Senate District 25:	House Districts 7, 8, 9	
Senate District 26:	House Districts 77, 87, 88	Assigned to Senator Reineke
Senate District 27:	House Districts 17, 23, 31	
Senate District 28:	House Districts 32, 33, 34	
Senate District 29:	House Districts 47, 48, 49	
Senate District 30:	House Districts 94, 95, 96	
Senate District 31:	House Districts 50, 68, 69	
Senate District 32:	House Districts 64, 65, 72	Assigned to Senator O'Brien
Senate District 33:	House Districts 58, 59, 79	

All of the above assignments of Senators are made pursuant to Section 5, Article XI of the Ohio Constitution.

EXHIBIT

B



Pursuant to the 2020 U.S. Census, the population of Ohio as of April 1, 2020 was 11,799,448. The target population for each district is therefore 119,186.

Statistical Information – Ohio House Districts
Revised January 22, 2022

House District	Population	Deviation
1	113,426	-4.83%
2	113,423	-4.84%
3	113,935	-4.41%
4	113,292	-4.95%
5	114,607	-3.84%
6	117,140	-1.72%
7	118,578	-0.51%
8	116,036	-2.64%
9	113,314	-4.93%
10	122,847	3.07%
11	116,233	-2.48%
12	113,760	-4.55%
13	125,080	4.95%
14	123,343	3.49%
15	124,886	4.78%
16	124,466	4.43%
17	120,136	0.80%
18	124,926	4.82%
19	124,679	4.61%
20	124,935	4.82%
21	123,674	3.77%
22	124,471	4.43%
23	123,242	3.40%
24	122,543	2.82%
25	120,544	1.14%
26	115,016	-3.50%
27	123,894	3.95%
28	120,869	1.41%
29	113,611	-4.68%
30	114,162	-4.22%
31	124,384	4.36%
32	119,235	0.04%
33	124,651	4.59%

GENERAL ASSEMBLY DISTRICT PLAN
REVISED JANUARY 22, 2022

House District	Population	Deviation
34	124,474	4.44%
35	121,171	1.67%
36	114,991	-3.52%
37	125,125	4.98%
38	122,075	2.42%
39	116,366	-2.37%
40	113,280	-4.96%
41	113,996	-4.35%
42	115,350	-3.22%
43	115,804	-2.84%
44	123,473	3.60%
45	123,472	3.60%
46	121,992	2.35%
47	115,745	-2.89%
48	113,975	-4.37%
49	124,555	4.50%
50	113,841	-4.48%
51	123,149	3.33%
52	123,593	3.70%
53	114,203	-4.18%
54	121,704	2.11%
55	120,633	1.21%
56	124,454	4.42%
57	124,671	4.60%
58	116,292	-2.43%
59	123,105	3.29%
60	113,964	-4.38%
61	113,860	-4.47%
62	124,425	4.40%
63	113,544	-4.73%
64	124,731	4.65%
65	117,025	-1.81%
66	116,342	-2.39%
67	118,575	-0.51%
68	115,385	-3.19%
69	114,369	-4.04%
70	116,643	-2.13%

GENERAL ASSEMBLY DISTRICT PLAN
REVISED JANUARY 22, 2022

House District	Population	Deviation
71	115,026	-3.49%
72	122,012	2.37%
73	123,971	4.01%
74	121,539	1.97%
75	116,122	-2.57%
76	116,323	-2.40%
77	124,936	4.82%
78	116,894	-1.92%
79	117,815	-1.15%
80	124,211	4.22%
81	113,487	-4.78%
82	114,464	-3.96%
83	120,963	1.49%
84	114,313	-4.09%
85	122,372	2.67%
86	113,287	-4.95%
87	113,433	-4.83%
88	116,875	-1.94%
89	123,660	3.75%
90	115,793	-2.85%
91	114,286	-4.11%
92	119,113	-0.06%
93	117,981	-1.01%
94	122,131	2.47%
95	124,027	4.06%
96	124,223	4.23%
97	121,818	2.21%
98	113,571	-4.71%
99	125,112	4.97%

GENERAL ASSEMBLY DISTRICT PLAN
REVISED JANUARY 22, 2022

Statistical Information – Ohio Senate Districts
Revised January 2022

Senate District	Population	Deviation
1	348,914	-2.42%
2	355,787	-0.50%
3	350,746	-1.91%
4	368,937	3.18%
5	361,748	1.17%
6	362,191	1.30%
7	366,231	2.43%
8	348,642	-2.49%
9	358,103	0.15%
10	347,791	-2.73%
11	342,626	-4.18%
12	349,972	-2.12%
13	360,945	0.95%
14	353,762	-1.06%
15	340,784	-4.69%
16	347,133	-2.92%
17	351,380	-1.73%
18	374,237	4.66%
19	341,395	-4.52%
20	367,328	2.73%
21	372,824	4.27%
22	351,811	-1.61%
23	374,941	4.86%
24	367,945	2.90%
25	347,928	-2.69%
26	355,244	-0.65%
27	372,602	4.21%
28	368,270	3.00%
29	354,275	-0.92%
30	370,381	3.59%
31	343,595	-3.91%
32	363,768	1.74%
33	357,212	-0.10%

GENERAL ASSEMBLY DISTRICT PLAN
REVISED JANUARY 22, 2022

Ohio's 33 Senate districts are comprised of the following Ohio House districts.

Senate District 1:	House Districts 81, 82, 83	
Senate District 2:	House Districts 43, 76, 89	Assigned to Senator Gavarone
Senate District 3:	House Districts 4, 5, 10	
Senate District 4:	House Districts 44, 45, 46	
Senate District 5:	House Districts 35, 39, 80	
Senate District 6:	House Districts 36, 37, 38	
Senate District 7:	House Districts 27, 54, 55	
Senate District 8:	House Districts 28, 29, 30	
Senate District 9:	House Districts 24, 25, 26	
Senate District 10:	House Districts 70, 71, 75	
Senate District 11:	House Districts 40, 41, 42	
Senate District 12:	House Districts 84, 85, 86	
Senate District 13:	House Districts 51, 52, 53	
Senate District 14:	House Districts 62, 63, 90	
Senate District 15:	House Districts 1, 2, 3	
Senate District 16:	House Districts 6, 11, 12	
Senate District 17:	House Districts 91, 92, 93	
Senate District 18:	House Districts 56, 57, 99	Assigned to Senator Cirino
Senate District 19:	House Districts 60, 61, 98	
Senate District 20:	House Districts 73, 74, 97	
Senate District 21:	House Districts 19, 21, 22	
Senate District 22:	House Districts 66, 67, 78	Assigned to Senator Romanchuk
Senate District 23:	House Districts 13, 18, 20	
Senate District 24:	House Districts 14, 16, 17	Assigned to Senator Dolan
Senate District 25:	House Districts 7, 8, 9	
Senate District 26:	House Districts 77, 87, 88	Assigned to Senator Reineke
Senate District 27:	House Districts 15, 23, 34	
Senate District 28:	House Districts 32, 33, 31	
Senate District 29:	House Districts 47, 48, 49	
Senate District 30:	House Districts 94, 95, 96	
Senate District 31:	House Districts 50, 68, 69	
Senate District 32:	House Districts 64, 65, 72	Assigned to Senator O'Brien
Senate District 33:	House Districts 58, 59, 79	

All of the above assignments of Senators are made pursuant to Section 5, Article XI of the Ohio Constitution.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Michael Gonidakis, Mary Parker, Margaret Conditt, Beth Vanderkooi, Linda Smith, Delibert Dudit, Thomas Kidd

(b) County of Residence of First Listed Plaintiff Franklin
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Don Brey, Brian Zets, Matthew Aumann, Ryan Spitze
Isaac Wiles & Burkholder, Two Miranova Place, Suite

DEFENDANTS

Ohio Redistricting Commission, Frank LaRose

County of Residence of First Listed Defendant Franklin
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. 1983

Brief description of cause:
Constitutional violation concerning election.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

2/18/2022

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAILED BY BENNETT_041

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Michael Gonidakis, <i>et al.</i> ,	:	
	:	Case No. 2:22-cv-773
Plaintiffs,	:	
	:	
v.	:	
	:	
Ohio Redistricting Commission, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION
AND DECLARATORY RELIEF**

Now come Plaintiffs Michael Gonidakis, Mary Parker, Margaret Conditt, Beth Ann Vanderkool, Linda Smith, Delbert Duduit, Thomas W. Kidd Jr., and Ducia Hamm ("Plaintiffs"), by and through undersigned counsel, and move this Court for a preliminary injunction pursuant to Fed. R. Civ. P. 65(a) and request that this Court enjoin the Ohio Redistricting Commission, Ohio Secretary of State Frank LaRose, in his official capacity, and all persons acting on their behalf or in concert with them from implementing, enforcing, or conducting any elections for state legislative office because Ohio's state legislative districts violate the U.S. Constitution. Plaintiffs further request that this Court adopt the attached plan that complies with the U.S. Constitution, attached to the Complaint as Exhibit B. A Memorandum in Support of this Motion is attached.

Respectfully submitted,

Isaac Wiles & Burkholder LLC

/s/ Donald C. Brey
Donald C. Brey (0021965)
Brian M. Zets (0066544)
Matthew R. Aumann (0093612)
Ryan C. Spitzer (0093515)

Two Miranova Place, Suite 700
Columbus, Ohio 43215
Tel: 614-221-2121; Fax: 614-365-9516
dbrey@isaacwiles.com
bzets@isaacwiles.com
maumann@isaacwiles.com
rspitzer@isaacwiles.com

*Attorneys for Plaintiffs Michael Gonidakis,
Mary Parker, Margaret Conditt, Beth Ann
Vanderkooi, Linda Smith, Delbert Duduit,
Thomas W. Kidd, Jr., and Ducia Hamm*

MEMORANDUM IN SUPPORT

The Ohio Redistricting Commission has adopted two plans for drawing state legislative districts. These plans are compliant with the U.S. Constitution. Yet twice, the Ohio Supreme Court has invalidated those plans. With no path forward, the Redistricting Commission declared impasse. There will not be a third try.

Without new maps, Plaintiffs' constitutional right to vote has been violated. Ohio's population has shifted significantly in the last ten years, so if Plaintiffs are forced to vote for candidates using 2010 state legislative districts, then their votes will be impermissibly diluted. Alternatively, if the 2010 state legislative districts have expired, then Plaintiffs cannot vote because Ohio has no legislative district maps. Either way, Plaintiffs' most fundamental right has been denied. Additionally, Plaintiffs cannot freely associate with those in their improper or unknown state legislative districts.

To secure Plaintiffs' constitutional rights, this Court should issue an order adopting the Second Plan approved by the Ohio Redistricting Commission, attached as Exhibit B to the Complaint.

I. BACKGROUND

The Redistricting Commission adopted two plans that comply with the U.S. Constitution. With those plans thrown out, and no path forward for maps that reflect the 2020 census, Plaintiffs' right to vote has been denied.

A. Ohio's 2010 legislative district maps and the 2015 constitutional amendment.

The State of Ohio has a bicameral legislature, with a House of Representatives and a Senate. Historically, the Ohio Constitution has provided for 99 Representatives and 33 Senators,

with the districts determined by using the federal decennial census to divide the total population of the state by 99 and 33. *See* Ohio Constitution, Article XI, Section 2.

Ohio's 2010 legislative district maps were created after receipt of the 2010 U.S. Census data showing that Ohio had a population of 11,536,504 people. The 2010 legislative district maps were created in accordance with the U.S. Constitution and the Ohio Constitution. *See Wilson v. Kasich*, 134 Ohio St.3d 221, 2012-Ohio-5367, 981 N.E.2d 814, ¶ 48.

In 2015, voters amended the Ohio Constitution with "Issue 1," which created a bipartisan process for drawing new state legislative districts relying on federal decennial census data. As before the amendment, state legislative districts were to be based on the population of the state as determined by the federal decennial census. *See* Ohio Constitution, Article XI, Section 3.

Issue 1 also created the seven-member bipartisan Ohio Redistricting Commission. State legislative district plans approved by a bipartisan majority of the Redistricting Commission would be valid for ten years, while a district plan approved by a simple majority for would be valid for four years. *See* Ohio Constitution, Article XI, Sections 8(B) and 8(C)(1)(a).

Finally, the amendment also recognized the limited role of the Ohio Supreme Court. Unlike federal courts, the Ohio Supreme Court cannot order that a particular plan for state legislative districts be adopted. *See* Ohio Constitution, Article XI, Section 9(D). Instead, the Ohio Supreme Court is limited to repeatedly returning the issue to the Redistricting Commission. *Id.*

B. The 2020 Census shows that Ohio's population significantly changed.

The Redistricting Commission's job was to draw state legislative districts based on the population of the state as determined by the 2020 U.S. Census data. Procuring the 2020 U.S. Census data was no easy task. Ohio had to sue the Census Bureau to receive delivery of the 2020 U.S. Census data. Even then, the data was delayed.

The 2020 U.S. Census data showed that much has changed in Ohio over the last ten years, including a net gain of more than 250,000 people and double-digit growth in several regions. (ECF No. 1, Complaint, ¶ 1). Many political subdivisions such as Franklin, Delaware, Warren, and Union Counties grew by double-digits. (*Id.*, ¶ 33). Franklin, Cuyahoga, and Hamilton Counties, Ohio's most populous counties, saw a total shift of more than 200,000 people. (*Id.*, ¶ 34).

C. The First Plan is adopted by the Redistricting Commission in September 2021 using 2020 census data.

After finally receiving the 2020 decennial census, the Redistricting Commission held public meetings throughout Ohio on September 12, 13, and 14. Soon after, the Redistricting Commission adopted the First Plan. (Complaint, Exhibit A).

The First Plan used the 2020 federal census data. (*Id.*, p. 3). The 2020 census found that Ohio's population on April 1, 2020, was 11,799,448. (*Id.*). This means that the target population for Ohio's 99 house districts is 119,186 people per district (*Id.*), and the target population of Ohio's 33 senate districts is 357,558 people per district. (*See id.*). The First Plan, using the 2020 census data, ensured that the most and least populated districts did not vary in total population by more than 10%.

But soon after the First Plan was adopted, at least three organizations filed complaints in the Ohio Supreme Court challenging the Redistricting Commission's First Plan.

D. Three months after adoption, the First Plan is rejected.

Ohio's key election deadlines start in February and end with the May primary. But while the First Plan was adopted in September 2021, the Ohio Supreme Court invalidated the First Plan more than three months later, in January 2022. *See League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 2022-Ohio-65, ¶ 138. This first ruling came right in front of election season.

The Ohio Supreme Court sent the Redistricting Commission back to the drawing board. It was ordered reconstituted under Article XI, Section 1, to “convene, and to ascertain and adopt a General Assembly – district plan in conformity with the Ohio Constitution” and directed the Redistricting Commission to adopt a new plan within ten days. *Id.* at ¶ 139.

E. The Second Plan is adopted using 2020 census as key election deadlines approach and then pass.

Soon after the Court’s order to reconvene, the Redistricting Commission met and adopted the Second Plan for state legislative districts on January 22, 2022. The Second Plan also used the 2020 federal census data. (Complaint, Exhibit B). Again, the Second Plan noted the 2020 federal census found that Ohio’s population was 11,799,448, as of April 1, 2020. (*Id.*, p. 3). This meant Ohio’s target house district would have 119,186 people per district and Ohio’s senate district would have 357,558 people per district. (*See id.*). The Second Plan also made sure there was less than a 10% difference in population between house and senate districts. (*Id.*).

But while still following these standards, the Second Plan was slightly different from the First Plan. The Second Plan changed five House districts from the Redistricting Commission’s First Plan from Republican-leaning to Democratic-leaning and changed three Senate districts from Republican-leaning to Democratic-leaning representing a greater than 6% total increase in the number of Democratic-leaning districts.

The Second Plan was also challenged. And as this latest challenge was considered, Ohio’s key election deadlines began to pass. On February 2, 2022, for example, the deadline for partisan candidates to declare their candidacy passed. Yet there was no decision on the Second Plan.

F. The Second Plan is rejected as more election deadlines pass.

After the deadline for partisan candidates to declare their candidacy for state legislative office passed, the Ohio Supreme Court issued another opinion. Despite the changes made by the

Redistricting Commission, the Ohio Supreme Court sustained objections relating to the Redistricting Commission's Second Plan. *See League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 2022-Ohio-342, ¶ 67.

The Ohio Supreme Court ordered the creation of a Third Plan. The Ohio Supreme Court's decision was issued on February 7, 2022, with an order to file an updated plan with the Ohio Secretary of State's office on February 17, 2022, and to file a copy of the Third Plan with the Court by 9:00 am on February 18, 2022.

But in the interim, another election deadline slipped away. The deadline for local Boards of Elections to certify the validity and sufficiency of partisan candidates' petitions passed on February 14, 2022.

G. The Redistricting Commission declares impasse and cannot pass Third Plan.

The Redistricting Commission complied with the Ohio Supreme Court's order. (Complaint, ¶ 54). It met to consider a Third Plan. But the Redistricting Commission could not agree. (*Id.*, ¶ 55). It concluded during the meeting that an agreement could not be reached. Therefore, the Redistricting Commission declared "impasse," and determined a Third Plan would not be issued. (*Id.*, ¶ 56).

H. The 2022 election is in jeopardy.

The 2022 election schedule is out the window. Multiple deadlines have been missed since the First Plan was adopted in September and then rejected. The deadline for partisan candidates to declare passed. The deadline for local election boards to certify partisan petitions passed. Looming ahead are the deadlines for write-in candidates (February 22), voter registration (April 4), and the primary election (May 3), among others. And, because the Ohio Supreme Court cannot order the adoption of a plan, additional 2022 election deadlines will pass without this Court's involvement.

I. Plaintiffs are either in outdated 2010 state legislative districts or no districts at all.

Plaintiffs are Ohio voters with either diluted votes or no votes at all. Much has changed in Ohio since 2010. Ohio's population grew by more than 250,000 people, with major changes across the state. But districts created in 2010 cannot capture these population changes. (Complaint, ¶ 59).

Mr. Gonidakis, Ms. Vanderkooi, and Ms. Smith live in Franklin County, which has gained more than 150,000 people since the 2010 census, and their respective cities have experienced more than 10% in population gains, diluting their votes within their voting districts. (*Id.*). The same is true for Ms. Parker, Mr. Kidd, and Ms. Conditt, whose areas (and therefore districts) have also grown exponentially in population. (*Id.*). On the other hand, areas in Ohio that have lost population, such as Scioto County, will have concentrated voting power, and create a greater disparity between the most populous and least populous legislative districts. (*Id.*).

As a result, Plaintiffs' districts (utilizing the 2010 legislative district maps), including House Districts 18, 19, 21, 52, 62, 68, 70, and 90 and Senate Districts 3, 4, 7, 14, 15, 16, 19, and 22, are malapportioned. (*Id.*, ¶ 60). And to adjust these districts, the remaining districts in Ohio must be adjusted too.

Alternatively, the 2010 state legislative districts have expired. (*Id.*, ¶ 62). The state legislative districts last a ten-year cycle. That cycle started in 2010 and has concluded. This leaves Plaintiffs without state legislative districts, and no way to participate in the upcoming election.

No matter if the districts are malapportioned or nonexistent, the ongoing uncertainty for the 2022 election cycle prevents voters, including Plaintiffs, from knowing their voting district, engaging with candidates, holding representatives accountable, and associating or organizing with their favored candidates.

II. STANDARD OF REVIEW

In determining whether to grant a preliminary injunction, a district court considers four factors: In deciding whether to grant a preliminary injunction, a court weighs four factors: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent the injunction; (3) whether the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of an injunction. *Daunt v. Benson*, 956 F.3d 396, 406 (6th Cir. 2020); *see Bays v. City of Fairborn*, 668 F.3d 814, 818-19 (6th Cir. 2012). These factors “are not prerequisites, but rather are factors which the Court should balance.” *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 653 (6th Cir. 1996). These four factors are met here because Plaintiffs’ fundamental rights are being denied, and there is no harm in securing the right to vote or associate.

III. LAW AND ARGUMENT

Because Plaintiffs’ constitutional right to vote has been violated and the four preliminary injunction factors favor Plaintiffs, this Court should issue an injunction and other appropriate relief that adopts the Second Plan, attached to the Complaint as Exhibit B.

A. Plaintiffs are likely to succeed on the merits because their right to vote and right to associate has been denied.

Because Plaintiffs’ votes are either diluted using the 2010 state legislative district maps or there are no maps at all, Plaintiffs’ right to vote has been denied. Additionally, the uncertainty and lack of definitive maps have denied Plaintiffs’ freedom to associate. For these reasons, Plaintiffs are likely to succeed on the merits, and this Court should grant a preliminary injunction.

1. The state legislative districts are based on the 2010 census, so they are now malapportioned in violation of the U.S. Constitution.

Because of the “one-person, one-vote” rule, using the 2010 census data for the 2022 election violates the Equal Protection Clause. *See Evenwel v. Abbott*, 578 U.S. 54, 59, 136 S. Ct. 1120, 1124 (2016). As the U.S. Supreme Court recently explained, when drawing state legislative districts, the maximum population deviation between the largest and smallest districts is 10%. *Id.* (citing *Brown v. Thomson*, 462 U.S. 835, 842-843, 103 S. Ct. 2690, 77 L. Ed. 2d 214 (1983)). In fact, “[m]aximum deviations above 10% are presumptively impermissible.” *Id.* Such deviations violate the Equal Protection Clause of the U.S. Constitution. *Id.* (citing *Reynolds v. Sims*, 377 U.S. 533, 568, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964)); *see also Kopald v. Carr*, 343 F. Supp. 51, 52 (M.D. Tenn. 1972).

Here, the population in Plaintiffs’ state legislative districts are more than 10% above the least populous state legislative districts, in violation of the Equal Protection Clause, so this Court should adopt the Second Plan. Plaintiffs’ house and senate districts are based on based on 2010 decennial census. (Complaint, ¶ 59). Mr. Gonidakis, Ms. Vanderkooi, and Ms. Smith live in Franklin County, which has gained more than 150,000 people since the last census, and their respective cities have experienced more than 10% in population gains. (*Id.*). The same is true for Ms. Parker, Mr. Kidd, Ms. Conditt, whose areas have also experienced exponential population growth. (*Id.*). Conversely, other areas throughout the state have lost population. (*Id.*).

Because Ohio’s population has changed, so too has the population in the state legislative districts. Double-digit growth in some areas and population losses in others means that the state legislative districts cannot be within 5% of the target population for a state legislative district. (*Id.*, ¶ 60). As a result, Plaintiffs’ districts, including House Districts 18, 19, 21, 52, 62, 68, 70, and 90

and Senate Districts 3, 4, 7, 14, 15, 16, 19, and 22, dilute their vote in violation of the “one-person, one-vote” requirement.

This is not a surprise. Adhering to the one-person, one-vote requirement does not happen by accident. Instead, the First Plan and Second Plan consider the acceptable variance with mathematical precision. (Complaint, Exhibits A and B). Both plans use the same target number for the district size using the 2020 decennial census. (*Id.*). And both plans made sure that the population variance did not go 5% above or below that threshold. (*Id.*).

The problem is also not limited just to Plaintiffs. To fix Plaintiffs’ state legislative districts, people across the state must be moved from one district to another. (*See id.*). These districts cannot be adjusted in vacuum. Instead, individuals must be moved in or out of these districts from districts across Ohio. A state-wide solution was recognized by the Redistricting Commission in the First Plan and the Second Plan. (*Id.*).

For these reasons, Plaintiffs’ state legislative districts and Ohio’s legislative districts generally violate the “one-person, one-vote” rule provided by the U.S. Constitution.

2. Alternatively, no state legislative districts exist so Plaintiffs cannot vote in violation of the U.S. Constitution.

Alternatively, the lack of state legislative districts violate the U.S. Constitution because Plaintiffs cannot vote for their state representatives. The right to vote is a fundamental right, and the Equal Protection Clause and the Substantive Due Process Clause prohibit blanket disenfranchisement. *George v. Hargett*, 879 F.3d 711, 727 (6th Cir. 2018) (citing *Warf v. Bd. of Elections of Green Cty.*, 619 F.3d 553, 559 (6th Cir. 2010)); *see also League of Women Voters v. Brunner*, 548 F.3d 463, 478 (6th Cir. 2008). In these instances, “federal court intervention may be appropriate” to avoid an unfair election. *Brunner*, 548 F.3d at 478 (citing *Griffin v. Burns*, 570 F.2d 1065, 1078-79 (1st Cir. 1971)).

Here, Plaintiffs have been disenfranchised by the lack of state legislative districts so this Court should adopt the Second Plan. (Complaint, ¶ 62). The state legislative districts expired in 2020. And the Redistricting Commission reached an impasse for the new state legislative districts. Without legislative districts, there is no election. Plaintiffs cannot vote in election that does not exist. It is a blanket disenfranchisement that violates the Equal Protection Clause and the Due Process Clause, and is such a fundamental violation that this Court should intervene.

3. Plaintiffs cannot freely associate with others in their district in violation of the U.S. Constitution.

Because Plaintiffs cannot associate with members of their state legislative districts, their constitutional rights are being violated. “The rights of political association and free speech occupy a similarly hallowed place in the constitutional pantheon.” *Graveline v. Benson*, 992 F.3d 524, 535 (6th Cir. 2021) (citation omitted). Though the right to politically associate is not absolute, a severe restriction must be narrowly drawn to advance a state interest of compelling importance. *Kishore v. Whitmer*, 972 F.3d 745, 749 (6th Cir. 2020) (citation omitted).

Here, Plaintiffs cannot associate with members of their state legislative districts in violation of the U.S. Constitution. Plaintiffs’ state legislative districts are either constitutionally malapportioned (and thus soon to be changed) or do not exist at all. Either way, Plaintiffs cannot run for office, interact with other officeholders, learn about candidates, or interact with others in their state legislative districts about common issues. Moreover, this severe restriction has no compelling interest of state importance. Indeed, Plaintiffs’ fundamental rights appear to be burdened for no reason at all. Accordingly, Plaintiffs’ right to associate and engage in political discourse has been violated, and this Court should intervene.

B. Because fundamental rights are being denied, the remaining preliminary injunction factors favor the adoption of the Second Plan.

As Plaintiffs' fundamental rights are being denied, the remaining preliminary injunction factors favor this Court adopting the Second Plan. No American right is more fundamental than the right to vote. The United States Supreme Court has repeatedly held that the U.S. Constitution *undeniably* protects the "right of all qualified citizens to vote, in state and federal elections" and, furthermore:

A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote, *Ex parte Yarbrough*, 110 U.S. 651, and to have their votes counted, *United States v. Mosley*, 238 U.S. 383. In *Mosley* the Court stated that it is 'as equally unquestionable that the right to have one's vote counted is as open to protection . . . as the right to put a ballot in a box.' 238 U.S., at 386.

Reynolds v. Sims, 377 U.S. 533, 554-555, 84 S. Ct. 1362, 1377-1378, 12 L. Ed. 2d 506, 523-524, (1964). This includes the right to not have votes diluted or discarded. *Id.* at 555 ("the right of suffrage can be denied by a debasement or dilution of the weight of a citizens vote just as effectively as by wholly prohibiting the free exercise of the franchise."); *see Baker v. Carr*, 369 U.S. 186, 206 (1962) (finding voters who allege facts showing disadvantage to themselves have standing to sue.).

Because the right to vote is so fundamental, district courts may adopt a map to fix a constitutional violation. *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2495 (2019). Indeed, "there is a role for the courts" to resolve one-person, one-vote and other violations. *Id.* (citations committed); *see, e.g., Kopald v. Carr*, 343 F. Supp. 51, 52 (M.D. Tenn. 1972). In *Kopald*, multiple plans were proposed by the legislative authority, including one with a population variance of 21%. *Id.* In response, the court adopted a modified plan that reduced the variance to 4% and maintained jurisdiction for one election cycle. *Id.* at 54 (citing *Ely v. Klahr*, 403 U.S. 108, 91 S. Ct. 1803, 29

L. Ed. 2d 352 (1971)); *see also McConchie v. Scholz*, No. 21-cv-3091, 2021 U.S. Dist. LEXIS 201160, at *67 (N.D. Ill. Oct. 19, 2021) (ordering submission of proposed map to be considered by the court following Equal Protection Clause violation). Therefore, a court may modify state legislative cycles so that it complies with one-person, one-vote for at least one election cycle.

Here, this Court should adopt the Second Plan so that Plaintiffs' constitutional rights are no longer violated. Unlike this Court, the Ohio Supreme Court cannot intervene. It is prohibited by the Ohio Constitution from adopting a plan. *See* Ohio Constitution, Article XI, Section 9(D). Because the Redistricting Commission declared an impasse, without this Court's intervention, Plaintiffs' vote will be diluted by using the 2010 state legislative districts or otherwise denied.

Given Plaintiffs' constitutional right to vote (and an equal right to have their votes not diluted or discarded), Plaintiffs suffer irreparable harm if the 2010 legislative district maps are used because they live in districts where the population increased, which, in turn, dilutes their voting power. Alternatively, if Ohio has no maps at all, Plaintiffs have no ability to vote, and no election occurs. Adopting the Second Plan eliminates Plaintiffs' irreparable harm.

Adopting the Second Plan would not harm third parties. And unless this Court adopts the Second Plan, the 2022 election cycle deadlines will continue to pass without the state legislative district maps. Each missed deadline creeps closer to upending the May 3, 2022, primary election process.

Lastly, the public interest favors granting the adoption of the Second Plan because the public has interest in voting—either in undiluted districts or at all. Moreover, the validity of statewide elections strikes at the heart of America's representative democracy.

Thus, in addition to Plaintiffs establishing that they have a strong likelihood of success on the merits, the remaining injunctive factors favor Plaintiffs, and this Court should order the adoption of the Second Plan.

IV. CONCLUSION

For all these reasons, Plaintiffs respectfully request that this Court:

- i. Declare that the current configurations of Ohio's state legislative districts (or lack thereof) violate the First and Fourteenth Amendments to the U.S. Constitution;
- ii. Permanently enjoin Defendants and all persons acting on their behalf or in concert with them from implementing, enforcing, or conducting any elections under Ohio's current state legislative districts;
- iii. Establish a schedule that will enable the Court to adopt a timely enacted and lawful plan and implement the new plan for Ohio's state legislative districts, specifically the Second Plan;
- iv. Issue an order, as needed, staying the necessary election-related deadlines as they pertain to the state legislative districts pending this Court's implementation of interim redistricting plans; and
- v. Retain jurisdiction while Defendants enacts plans by this Court's deadline;

Respectfully submitted,

Isaac Wiles & Burkholder LLC

/s/ Donald C. Brey

Donald C. Brey (0021965)

Brian M. Zets (0066544)

Matthew R. Aumann (0093612)

Ryan C. Spitzer (0093515)

Two Miranova Place, Suite 700

Columbus, Ohio 43215

Tel: 614-221-2121; Fax: 614-365-9516

dbrey@isaacwiles.com

bzets@isaacwiles.com

maumann@isaacwiles.com

rspitzer@isaacwiles.com

*Attorneys for Plaintiffs Michael Gonidakis,
Mary Parker, Margaret Conditt, Beth Ann
Vanderkooi, Linda Smith, Delbert Dudit,
Thomas W. Kidd, Jr., and Ducia Hamm*

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2022, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

I further certify that a copy of this motion and all other filings in this action have been served upon the adverse party's attorneys, Bridget Coontz, Ohio Attorney General's Office, bridget.coontz@ohioattorneygeneral.gov, and Eric Clark, Organ Law LLP, ejclark@organlegal.com.

/s/Donald C. Brey
Donald C. Brey (0021965)